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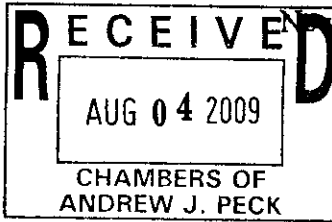
DATE FILED: 8/4/09  
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**BY FAX**

VIA FACSIMILE (without enclosures)  
and HAND DELIVERY (with enclosures)

Andrew J. Peck  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 2210  
New York, New York 10007

Re: Whitfield v. O'Connell, et al.  
Index No. 09-CIV.1925 (WHP)

Dear Justice Peck:

Our firm represents defendants Robert L. Rush, Ph.D. and BioReference Laboratories s/h/a Medilabs Laboratory.

I am writing in response to your Scheduling Order dated July 29, 2009, wherein the undersigned was ordered to provide Your Honor with copies of plaintiff's discovery requests and defendant Medilab's responses by July 31, 2001.

Unfortunately, the undersigned did not receive a copy of the Scheduling Order by facsimile, as indicated on the order. Rather, the undersigned received the Order late yesterday afternoon when my associate reviewed the case docket sheet on ECF/Pacer in connection with a telephone call to Justice

**MEMO ENDORSED**

*Re: Whitfield v. O'Connell, et al.*  
*DENIED. Nothing done re for the*  
*Order to you on 7/29/09 (w/enc for*  
*August 4, 2009)*  
*copy sent) but my secretary*  
*called your office several times*  
*before then to schedule hearing -*  
*a payment for the return of the*  
*for the court does not at his own point*  
*may have been expanding your and*  
*unavailable on 8/6. Hearing days*  
*re: your will go forward - I am*  
*not agree.*  
**SO ORDERED.**  
*[Signature]*  
Hon. Andrew Jay Peck  
United States Magistrate Judge  
*cm: [illegible] (P)*  
*[illegible]*

Pauley's chambers with respect to a motion filed by the plaintiff to amend the Complaint for which no pre-motion conference was held.

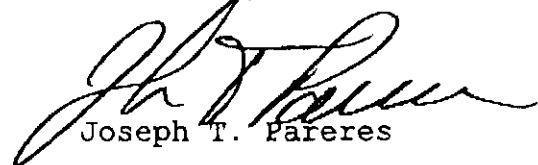
In compliance with Your Honor's Order, enclosed please find copies of the plaintiff's discovery requests and the defendant's responses. The plaintiff and Office of the Attorney General have previously been served with these documents.

We also first received notice late yesterday afternoon that Your Honor has scheduled a conference for Thursday August 6, 2009. The undersigned respectfully requests a short adjournment of the August 6, 2009 conference. The undersigned is not available to appear at the scheduled date and time. No prior request for an adjournment has been made with respect to this case before Your Honor and the late request is due to the late manner in which we were apprised of this conference. We are unable to reach the pro se plaintiff for consent, as he is currently imprisoned in Woodbourne Correctional Facility.

Of note, Justice Pauley's chambers advised me today that there is a pre-motion conference that is being scheduled for August 12, 2009 at 2pm to address plaintiff's motion to amend the complaint.

Thank you.

Sincerely,



Joseph T. Pareres

Encl. as indicated

cc: (without enclosures)

*VIA REGULAR MAIL*

Mr. John Whitfield  
88-a 5197 Woodbourne Correctional Facility  
99 Prison Road  
P.O. Box 1000  
Woodbourne, New York 12788

*VIA FACSIMILE*

Office of the Attorney General  
120 Broadway 24<sup>th</sup> Floor  
New York, New York 10271  
Attn: Christina Okereke, Esq.  
Assistant Attorney General

# FAX TRANSMITTAL SHEET



**ANDREW J. PECK  
UNITED STATES MAGISTRATE JUDGE  
UNITED STATES DISTRICT COURT**

Southern District of New York  
United States Courthouse  
500 Pearl Street, Room 1370  
New York, N.Y. 10007-1312

Fax No.: (212) 805-7933  
Telephone No.: (212) 805-0036

**Dated:** August 4, 2009

**Total Number of Pages:** 3

TO	FAX NUMBER
Joseph T. Pareres, Esq.	212-557-1336
Christina Chinwe Okereke, Esq.	212-416-6075

## **TRANSCRIPTION:**

### **MEMO ENDORSED 8/4/09**

Request to adjourn 8/6 conf. is **DENIED**. Not only did we fax the Order to you on 7/29 (we have fax confirmation) but my secretary called your office several times before then to schedule the conf. - a lawyer who fails to return calls from the Court does so at his own peril. Nor have you explained why you are unavailable on 8/6. Accordingly, the conf. will go forward and you must appear.

**Copies to:** John Whitfield (Mail)  
Judge William H. Pauley III